

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

IN RE MERCEDES-BENZ : MASTER NO. 99-4311
ANTI-TRUST LITIGATION :
:

----- **O R D E R**

The Court having convened a conference with all counsel in this matter on February 15, 2001, and it appearing that this Scheduling Order shall advance the efficient and prompt litigation of this matter,

It is on this 16th day of February 2001,
ORDERED as follows:

GENERAL PROVISIONS

1. Defendants having moved to dismiss the complaint and the Court anticipating that plaintiffs will move in future for certification of this matter as a class action, the provisions of this Order shall not be construed to imply any ruling or position of the Court on the viability of plaintiffs' cause of action or any other matter not expressly addressed herein.

2. Litigation of this matter shall be guided by the Manual for Complex Litigation, Third to the extent deemed practicable and desirable by the Court.

3. All counsel having been advised by letter that Mr. Marc Wolin is an associate at the law firm of Carpenter, Bennett and

Morrissey, counsel to Mercedes-Benz USA, and the Court having invited any objection to the Court's continued involvement with this case, and no objection having been heard, any such objection is now deemed waived.

4. The next conference in this matter shall be at 10:00 a.m. on March 16, 2001.

ORGANIZATION OF COUNSEL

5. The Court having invited objection to the several motions for admission of counsel pro hac vice at the conference, and no objection having been heard, all of the pro hac vice motions now pending on the docket of the Clerk of the Court are hereby granted, subject to the following conditions:

(a) Attorneys admitted pro hac vice must make the required annual payment to the New Jersey Client Protection Fund and file an affidavit of compliance, courtesy copy to Chambers, within twenty (20) days of the date of this Order.

(b) Attorneys admitted pro hac vice must be associated with New Jersey counsel admitted to practice at the bar of this Court, who shall sign all papers filed by the attorney admitted pro hac vice as co-counsel and who shall be responsible for their content. The Court expects that local counsel already appearing in this case to accommodate out-of-state counsel with joint local counsel arrangements to the extent such arrangements do not pose a conflict of

interest. Counsel admitted pro hac vice in this matter shall cause their local counsel to file a notice of appearance on behalf of the admitted counsel's client, courtesy copy to chambers, within twenty (20) days of the date of this Order.

6. Within seven (7) days of the date of this Order, counsel who wish to be appointed Lead Counsel for plaintiffs shall write to the Court, ex parte for in camera review, a letter so indicating, and include in that application

- (a) the basis for their belief that they can fund and staff the prosecution of this case;

- (b) a statement of their experience in class action and/or antitrust matters of this kind, including the title and court in which such matters may have been pending, including the Judge who may have presided over such matters;

- (c) a statement of any other reasons why they believe they should be appointed Lead Counsel;

- (d) any debt/credit or other financial arrangements they may have with any other counsel regarding the prosecution of this case.

7. Duties of Lead Counsel shall be to maintain and promote harmonious dealings among all plaintiffs' counsel. Lead Counsel shall provide general supervision of the activities of plaintiffs counsel and shall exercise the functions of Lead Counsel as

outlined in the Manual for Complex Litigation, Third §§ 20.22 and 41.31.

8. Lead Counsel's specific responsibilities shall include

- (a) briefing and arguing motions;
- (b) initiating and conducting discovery, including but not limited to coordination of discovery with defendants' counsel, the preparation for joint written interrogatories and requests for the production of documents;
- (c) acting as spokesperson at pretrial conferences
- (d) calling and chairing meetings of counsel as appropriate or necessary from time to time;
- (e) initiating and conducting any settlement negotiations;
- (f) providing general coordination of the activities of plaintiffs' counsel and to delegate work responsibilities between plaintiffs' counsel in such a matter as may be fair to counsel and to promote the efficient prosecution of this litigation by avoiding duplicative or unproductive effort;
- (g) consulting with and employing experts.

9. Lead counsel shall serve at the pleasure of the Court and may be removed by the Court on its own motion or upon good cause shown.

10. Lead Counsel for plaintiffs and all other plaintiffs counsel shall keep time records and supporting documentation

sufficient to permit an audit of those records to determine whether the time and expenses are appropriately spent for the benefit of plaintiffs, and such records shall be maintained until the Court expressly grants leave to the contrary. The parties are advised that the Court anticipates appointing an auditor in the event this matter progresses to the point where a fee application may reasonably be anticipated.

11. No pleadings or other papers shall be filed or tasks performed by plaintiffs in this action without the advance approval of Lead Counsel. No discovery shall be conducted by plaintiffs without the advance approval of Lead Counsel.

12. Within seven (7) days of the date of this Order, counsel for the defendant dealers will negotiate and agree among themselves regarding the appointment of Lead Counsel for the defendant dealers and submit their choice of Lead Counsel in the form of a consent order for execution by the Court. Lead Counsel for the defendant dealers shall have the same responsibilities and powers with respect to the dealer defendants as Lead Counsel for plaintiffs have with respect to plaintiffs.

13. Lisa Rodriguez, Esq. is hereby appointed Liaison Counsel and shall have the duty of maintaining and facilitating communication between counsel and between the Court and counsel, including the distribution of all Notices, Orders, Opinions and other communications from the Court to all parties. Liaison Counsel shall keep complete files of all materials thus received

and make that material available for inspection at reasonable hours, and shall maintain lists of all parties, counsel and their respective addresses. Appointment as Liaison Counsel shall not prejudice Ms. Rodriguez's opportunity to apply for an appointment as Lead Counsel for plaintiffs.

PRELIMINARY REPORTS

14. Counsel for defendants Mercedes-Benz USA, Sheft Kahn, and Lead Counsel for plaintiffs and individual counsel for the defendant dealers shall, within seven (7) days of the date of this Order or within seven days of their appointment as Lead Counsel, each submit to the Court and exchange with all other counsel a brief statement indicating their preliminary understanding of the facts involved in the litigation and the critical factual and legal issues. Any party may adopt in whole or in part the statements of any other party, and/or set forth only those facts or issues they believe apply to that party alone. These statements will not be filed with the Clerk, will not be binding, will not waive claims or defenses and may not be offered in evidence against a party in later proceedings.

15. To assist the Court in identifying any problems of recusal or disqualification, counsel will submit to the Court within seven (7) days of the date of this Order a statement of all companies affiliated with the parties and all counsel associated in the litigation.

16. Within seven (7) days of the date of this Order, counsel will submit a report listing all related cases now pending in any state or federal court and any prior case in which substantially similar allegations were made against any of the defendants in any state or federal court in the past.

COMMUNICATIONS

17. No privileges shall be waived as a result of any communication or exchange of documents or information between counsel and Liaison and/or Lead Counsel.

18. The Court having invited objection and no objection having been heard, the Court shall have the right to communicate ex parte with any attorney in this matter without permission of adversary attorneys. Any objection to such ex parte communication is deemed waived.

19. Orders and Opinions of the Court shall be posted on the Court's web site. The address is:

pacer.njd.uscourts.gov

Counsel are instructed to click on the link marked "Orders" and to follow any further prompts received. A hard copy of any Order or Opinion will also be forwarded to Liaison Counsel.

20. Service of pleadings and other papers shall be made by hand or overnight courier upon Liaison Counsel, Lead Counsel and counsel for defendants Mercedes-Benz-USA and Sheft Kahn and by regular mail upon counsel for all other parties.

THE MOTIONS TO DISMISS

21. The Court having been advised that all of the defendants have moved to dismiss the complaint, the Court will entertain only three briefs in support of the motion to dismiss, one from defendant Mercedes-Benz USA, one from Sheft Kahn, and one from Lead Counsel for the defendant dealers. All other briefs in support of the Motions to Dismiss will be deemed withdrawn. The three moving briefs will be served on or before March 15, 2001.

22. Lead Counsel for plaintiffs will serve its opposing brief on or before March 30, 2001. Coastal Automotive shall be permitted to intervene in this matter for the sole purpose of opposing the Motion to Dismiss. The Court will entertain a brief from Coastal Automotive solely to the extent it addresses issues not already briefed by Lead Counsel to the plaintiffs in opposition to the motion.

23. Defendants' reply, if any, shall be served on or before April 12, 2001.

24. The briefing and filing of the papers on the Motion to Dismiss shall be conducted pursuant to Appendix N of the local rules of this Court.

25. The local rules of this Court will be strictly enforced as to length and form of papers.

26. The parties having advised the Court that they wish to submit a statement of stipulated facts for the Court's

consideration in deciding the motion. The Court will consider such a statement to be incorporated in the allegations of the complaint for the purposes of the Motion to Dismiss. The submission of the statement of stipulated facts and the consideration by the Court of those facts shall not require the conversion under Federal Rule of Civil Procedure 12(b) of the Motion to Dismiss to a Motion for Summary Judgment. By their stipulation and submission of the statement of stipulated facts, the parties waive any objection based upon the procedure adopted by this paragraph. No additional factual material submitted will be considered by the Court, and the Court will consider arguments addressed to the legal sufficiency of the complaint only.

OTHER MOTION PRACTICE

27. No motion shall be served or filed without prior leave of Court and following a good faith attempt by counsel to resolve the matter amicably.

28. Any party wishing to make a motion shall contact the Court's Law Clerk, Evans Wohlforth, Esq. in Chambers in a telephone conference including all interested counsel for instructions on mode of briefing and referral to the Special Master.

29. Appendix N will be preferred for most multi-party motions, including non-dispositive motions.

30. James Shrager, Esq. of the law firm of Norris

McLaughlin and Marcus will be appointed Special Master. Any Opinion and Order of the Special Master on any contested matter shall be transmitted to the Court by the Special Master and that Opinion and Order shall be adopted as the Order of the Court without further notice unless a notice of objection is received within seven (7) days of the date of such Opinion and Order. Any further argument or briefing of the objection shall be conducted as the Court through its Law Clerk may direct.

31. The fees of the Special Master are to be allocated among the movant, respondent and any other party or parties, by the Special Master. In his fee allocation, the Special Master shall be guided by whether parties in addition to the movant and respondent shall benefit from the resolution of the dispute and by the relative merits of the motion or the opposition to the motion. It shall be rebuttably presumed that any motion made by or opposed by Lead Counsel is for the benefit of that counsel's constituents.

DISCOVERY

32. All outstanding discovery demands and proceedings are stayed until further Order of the Court and no further discovery shall be initiated. This shall not preclude voluntary, informal discovery regarding the identification and location of relevant documents and witnesses; shall not preclude parties from stipulating to the conduct of a deposition that has already been scheduled; and shall not preclude a party from voluntarily making

disclosure, responding to an outstanding discovery request under F.R.C.P. 33, 34, or 36. Parties continue to be obligated to gather information needed to respond to a request under F.R.C.P. 33, 34 or 36. Relief from the stay of discovery may be granted for good cause shown, such as the ill health of a proposed deponent.

33. The parties shall confer among themselves and present to the Court a plan which will include:

(a) Coordination of depositions of witnesses on common issues;

(b) A proposal for the establishment of a document depository in which parties may inspect and copy documents produced in this matter.

34. Counsel will consult with each other and report to the Court within thirty (30) days of the date of this Order whether they foresee a need to permit ex parte communications by adverse counsel with former or current defendants' employees. If such a need is foreseen, counsel shall develop a stipulated script for such communications.

35. Within thirty (30) days of the date of this Order, counsel will submit an updated protective order stipulated to by counsel for all the parties, including those added to this matter by the amended complaint.

PRESERVATION OF RECORDS

36. Each party shall preserve all documents and other records containing information potentially relevant to the subject matter of this litigation. Subject to further Order of the Court, parties may continue routine erasures of computerized data pursuant to existing programs, but they shall immediately notify opposing counsel about such programs, and preserve any printouts of such data. Within seven (7) days of the date of this Order, each party shall establish a written policy for its employees to implement that party's documents preservation obligations pursuant to the directives of this Court and each party shall deliver a hard copy of that policy to each of their employees. The written policy shall be preserved and made available for inspection or filing with the Court as may in future be required.

/S/_____
ALFRED M. WOLIN, U.S.D.J.